

Avis Rent-A-Car and International Longshoremen's and Warehousemen's Union, Local 142, AFL-CIO, Petitioner. Case 37-RC-3787

September 25, 1997

DECISION AND ORDER REMANDING

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered objections to an election held May 9, 1997,¹ and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 30 for and 21 against the Petitioner, with 5 challenged ballots, an insufficient number to affect the results of the election.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the Regional Director's findings and recommendations only to the extent consistent with this Decision and Order Remanding.

The Regional Director found that the Employer failed to file timely objections to the election. The Employer excepts, contending that the charge it filed in Case 37-CB-1323 constitutes timely filed objections. We find merit in the Employer's contention.

On May 16, 7 days after the election, the Employer filed with the Subregional office, on the Board's standard unfair labor practice charge form, a set of allegations pertaining to the conduct of Union Representative Calvin Warner on the day of the election. The Employer alleged the following:

On Friday, May 9, Mr. Calvin Warner the union organizing representative, did sit in front of a local surf shop at Kings Shopping Complex, visible to employees across the street from Avis' Waikiki location at 148 Kaiulani Avenue, during the polling period 11:30 a.m. to 12:00 p.m. this distance is approximately 100 feet away.

On Friday, May 9, Mr. Calvin Warner remained in the rental parking area adjacent to the Employer's airport facility during the polling period 1:00 p.m. to 2:00 p.m. Mr. Calvin Warner was observed standing within 15 feet of the polling area entrance and was observed engaging in conversations with employees, by Roth Puahala, as employees entered the polling area during the polling period 5:00 p.m. to 6:00 p.m.

On Friday, May 9, Mr. Warner had approached Mr. Lloyd Young, Shuttler and offered to buy Mr. Young lunch (pizza) if Mr. Young voted in favor of the union.

The union violated Section 8(b)(1)(A) of the NLRB, specifically engaging in conduct that is reasonably calculated to coerce Section 7 rights.

The Subregional office docketed the Employer's filing as an unfair labor practice charge in Case 37-CB-1323.

On May 19, the Subregion received a letter from Guy E. Wegener, the Employer's vice president, referring to certain evidence the Employer was providing in support of what the Employer called its previously filed election objections. Having only received from the Employer its filing of May 16, the Subregion called the Employer and explained that it had not received any objections to the election. The Employer responded that the allegations set forth in its unfair labor practice charge constitute the Employer's objections to the election.

The Regional Director found that the Employer's May 16 filing is not sufficient to constitute objections to the election, as it neither calls the election results into question, nor seeks to have the election set aside. Thus, the Regional Director found that Employer failed to file timely objections to the election and accordingly recommended that a Certification of Representative should issue.

Contrary to the Regional Director, we find that the Employer's filing of May 16, having been received within 7 days of the election as required by Section 102.69(a) of the Board's Rules and Regulations, is sufficient to constitute timely filed objections to the May 9 election. Although the Employer's allegations were set forth on the Board's standard unfair labor practice charge form, the allegations clearly communicate the Employer's contention that the Union's agent engaged in conduct interfering with the election. Indeed, the description of the conduct identified in the Employer's filing is typically identified with allegations of objectionable conduct. Further, as required by Section 102.69(a) of the Board's Rules and Regulations, the Employer's filing was made within 7 days of the election, and, within 7 days thereafter, the Employer furnished to the Subregion its evidence in support of its allegations of objectionable conduct. Thus, it is clear that the Employer acted consistent with an intent to file objections to the election.

In finding that the Employer failed to file objections to the election, the Regional Director relied on *Gardner Engineering, Inc.*, 313 NLRB 755 fn. 2 (1994); *Bandag, Inc.*, 225 NLRB 72 (1976); and *Irving Air Chute*, 149 NLRB 627, 629-630 (1964). We find those cases inapplicable to the instant facts. In those cases, the Board held that in the absence of timely filed objections an election will not be set aside based on the merits of an unfair labor practice charge. There was no contention in those cases, however, that the unfair labor practice charges were intended to serve as objec-

¹ All dates are in 1997 unless otherwise stated.

tions to the election.² Thus, the above cases do not require rejecting the Employer's May 16 filing as objections to the election merely because the allegations are set forth on an unfair labor practice charge form. That the allegations were contained on an unfair labor practice charge form and were not explicitly identified as election objections does not, by itself, undermine the otherwise clearly expressed intent by the Employer to allege the occurrence of conduct interfering with the election.

² Indeed, in *Bandag, Inc.*, supra, the party filing unfair labor practice charges specifically requested that its election objections be withdrawn.

Accordingly, we find that, in these circumstances, the Employer's May 16 filing constitutes timely filed objections to the election. Therefore, we shall remand the case to the Regional Director to consider the merits of these objections.

ORDER

It is ordered that the allegations set forth in the May 16, 1997 filing docketed in Case 37-CB-1323 are accepted as objections to the May 9, 1997 election, and that the above-entitled matter is remanded to the Regional Director for Region 20 for further appropriate action.